Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160 in Rhode Island	)))))))	WC Docket No. 08-24

MOTION TO DISMISS OR, IN THE ALTERNATIVE,
DENY PETITION FOR FORBEARANCE

The undersigned signatories, (referred to herein as "Joint Movants"), through counsel, and pursuant to 47 C.F.R. §§ 1.1 and 1.45, hereby move the Commission to dismiss the petition of Verizon New England ("Verizon") in the above-captioned proceeding or, in the alternative, to summarily deny the requested forbearance within the state of Rhode Island.[1]

I. INTRODUCTION AND SUMMARY

The facts presented in Verizon's petition for forbearance in the state of Rhode Island are simply a subset of the same facts upon which Verizon relied in support of its prior forbearance petition for the Providence MSA.[2] Yet the Commission unanimously denied Verizon's Providence MSA petition in its entirety just two and a half months before Verizon filed the instant petition. Because it has failed to submit any additional material facts in support of its Rhode Island petition, Verizon has failed to make a *prima facie* case to justify a different outcome than the one the Commission reached in the prior proceeding. Its petition therefore

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1 *Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160 in Rhode Island*, WC Docket No. 08-24 (filed Feb. 14, 2008)("*Verizon Rhode Island Petition*").

2 *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Providence Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006).

should be dismissed as facially insufficient or summarily denied for failure to meet the mandates of the Administrative Procedure Act ("APA"), the Commission's rules, and the forbearance standard in Section 10 of the Communications Act of 1934, as amended ("Act").[3] A decision by the Commission to dismiss or deny Verizon's petition is consistent with established principles of claim preclusion, would conserve valuable Commission resources, and would serve the public interest by fostering reasoned decision-making. In support of this Motion, the Joint Parties submit as follows.

II. BACKGROUND

On September 6, 2006, Verizon filed a group of petitions seeking forbearance from certain statutory provisions and Commission rules within six major Metropolitan Statistical Areas ("MSAs"). Verizon sought substantial deregulation within the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas ("MSAs"). Specifically, Verizon asked for forbearance from dominant carrier regulation of its mass market switched access services,[4] Section 251(c)(3) loop and transport unbundling obligations, and all *Computer III* obligations (*e.g.*, open network architecture ("ONA") and comparably efficient interconnection ("CEI") requirements) within those markets.[5] In support of

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3 47 U.S.C. § 160.

4 Specifically, Verizon sought forbearance from tariffing requirements, price cap regulation, and dominant carrier requirements concerning the processes for acquiring lines, discontinuing services, assignment or transfers of control, and acquiring affiliations. *See, e.g.,* Letter from Joseph Jackson, Associate Director, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172, at 7 (filed Jun. 13, 2007).

5 *See Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006), at 1; *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the New York Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006), at 1; *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Philadelphia Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006), at 1; *Petition of the Verizon Telephone*

its requests, Verizon asserted that the relief it sought was "substantially the same regulatory relief the Commission granted in the *Omaha Forbearance Order*."[6]

At the conclusion of a comprehensive fifteen-month proceeding which involved the active participation of over seventy different entities and resulted in a written record totaling in excess of five hundred separate documents, a unanimous Commission denied Verizon's petitions in their entirety, "find[ing] that the record evidence does not satisfy the section 10 forbearance standard with respect to any of the forbearance Verizon requests."[7] In particular, applying the framework adopted in the *Omaha Forbearance Order*[8] and the *ACS Forbearance Order*,[9] the Commission determined "that forbearance from the application to Verizon of the section 251(c)(3) obligations to provide unbundled access to loops, certain subloops, and transport to competitors in the 6 MSAs does not meet the standards set forth in section 10(a) of

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Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Pittsburgh Metropolitan Statistical Area, WC Docket No. 06-172 (filed Sept. 6, 2006), at 1; *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Providence Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006), at 1; *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Virginia Beach Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006), at 1 (the "*Verizon 6-MSA Petitions*").

6 *See, e.g., Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006), at 1.

7 *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, WC Docket No. 06-172, FCC 07-212 (rel. Dec. 5, 2007), at ¶ 1 ("*6-MSA Order*").

8 *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) ("*Omaha Forbearance Order*"), *aff'd Qwest Corporation v. Federal Communications Commission*, Case No. 05-1450 (D.C. Cir. Mar. 23, 2007).

9 *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion and Order, WC Docket No. 05-281 (rel. Jan. 30, 2007) ("*Anchorage Forbearance Order*").

the Act."[10] Verizon has sought judicial review of the Commission's forbearance denial in the D.C. Circuit.[11] A briefing schedule has yet to be established in that case.[12]

On February 14, 2008, a mere 70 days after release of the *6-MSA Order* and on the same day it filed a list of issues to be raised in its appeal of that order, Verizon filed a new petition seeking forbearance in the state of Rhode Island.[13] The Commission rules and statutory provisions for which forbearance is being requested in this petition are identical to the rules and provisions from which Verizon sought – and was denied – forbearance in the *6-MSA Proceeding*.[14] Importantly, the state of Rhode Island constitutes a subset of the Providence MSA, one of the six MSAs for which forbearance was explicitly denied in the *6-MSA Order*.[15]

As discussed in detail below, Verizon's petition should be summarily denied. The petition consists of nothing more than a repackaging of the forbearance request that was rejected by the Commission a mere two months ago. Verizon attempts to mislead the Commission into concluding that this new petition is something other than a reprise of its Providence MSA

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10 *Verizon 6-MSA Order*, at ¶ 36.

11 *Verizon Telephone Companies v. Federal Communications Commission, et al.*, No. 08-1012 (D.C. Cir. filed Jan. 14, 2008). Numerous parties, including several of the Joint Movants, have intervened in that appeal.

12 Verizon has indicated that it plans to raise the following issues in its brief: (1) whether the FCC's denial of forbearance violates Sections 10 and 251(d)(2) or is otherwise contrary to law; and (2) whether the order unlawfully departs from the Commission's past precedent without reasoned explanation, or is otherwise arbitrary, capricious, or an abuse of discretion. *See Verizon v. FCC*, No. 08-1012, Statement of Issues To Be Raised (D.C. Cir. filed Feb. 14, 2008).

13 Verizon is seeking forbearance throughout its incumbent local exchange territory in Rhode Island except for the Block Island rate center. *Verizon Rhode Island Petition*, at 1.

14 *Verizon Rhode Island Petition*, at n. 4 ("This is the same relief that Verizon sought in the Six MSA proceeding.").

15 According to 2006 U.S. Census Bureau figures, the population of Rhode Island constitutes 65.8% of the population of the Providence MSA. The remainder of the Providence MSA is in the state of Massachusetts. *See* U.S. Census Bureau, Metropolitan and Metropolitan Statistical Areas, *at* www.census.gov/popest/metro/html (last visited Mar. 10, 2008); U.S. Census Bureau, National and State Population Estimates, *at* www.census.gov/popest/states/NST-ann-est.html (last visited Mar. 10, 2008).

petition. It is not. The Commission should not countenance the diversion of its – and numerous interested parties' – limited resources to retry a case that was finally concluded after fifteen months of review and analysis a scant two months ago. This petition amounts to a purposeful effort by Verizon to hold the Commission's agenda hostage until it gets its way and to divert crucial industry resources from the business of competing. The Commission should send Verizon a clear signal that it will not reward such tactics by dismissing or summarily rejecting the petition.

At best, Verizon's attempt to get the Commission to reach a different conclusion on the basis of the same facts before it in the *6-MSA Proceeding* constitutes an impermissible request for reconsideration of the *6-MSA Order*. Because that request was not made within the time period prescribed by statute for petitions for reconsideration, the petition must be rejected by the Commission.

III. VERIZON'S PETITION IMPROPERLY SEEKS A DIFFERENT OUTCOME ON THE BASIS OF THE SAME FACTS BEFORE THE COMMISSION IN THE 6-MSA PROCEEDING

Verizon is seeking forbearance from the identical rules and statutory provisions within a subset of the geographic area for which it sought forbearance in the Providence MSA petition. That petition was soundly rejected by the Commission last December. Verizon contends, however, that competition from cable, traditional competitive local exchange carriers ("CLECs") (including those that rely on Verizon's Wholesale Advantage service and Section 251(c)(4) resale), and cut-the-cord wireless competition demonstrate that the forbearance standard applied by the Commission in the *6-MSA Order* "unquestionably is satisfied in Rhode Island."[16] What Verizon fails to acknowledge is that the competitive data upon which it relies

16 *Verizon Rhode Island Petition*, at 11.

here was before the Commission in the prior proceeding. Verizon has merely repackaged that data in an effort to gain another bite at the apple.

Verizon highlights the competitive inroads cable telephony provider Cox purportedly has made in the residential and enterprise markets. Yet Verizon fails to admit that the record in the prior proceeding – where its forbearance request was denied – contained substantially identical data regarding Cox's penetration in the same geographic area. Indeed, in addition to the Cox market penetration data submitted by Verizon midway through that docket,[17] Cox itself submitted more reliable, up-to-date market penetration data just weeks before the Commission's decision in December 2007.[18] The Commission relied in large part on that data in concluding that "competition from cable operators . . . does not present a sufficient basis for relief."[19]

The same conclusion holds true for the remainder of the information Verizon would have the Commission consider in the instant petition. The data regarding cut-the-cord wireless and CLEC competition is, at best, a few months more recent than the data before the Commission in the *6-MSA Proceeding*. Indeed, just four days before Commission adoption of the *6-MSA Order*, Verizon provided the Commission with Rhode Island-specific charts

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17 The bulk of the market penetration information presented to the Commission by Verizon, presented in the form of E911 carrier line counts, was submitted at the same time as its reply comments in April 2007.

18 *See* Letter from J.G. Harrington, Counsel to Cox Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (filed Oct. 30, 2007) ("*Cox Data Ex Parte*").

19 *6-MSA Order*, at ¶¶ 23, 27, 37. At most, the cable penetration data filed by Verizon with its Rhode Island petition is only several months more recent than the Cox-provided data submitted to the Commission for consideration in the *6-MSA Proceeding*.

containing up-to-date data purporting to show mass market cut-the-cord wireless, traditional CLEC, and cable telephony penetration in the state.[20]

Verizon likely will contend that the data before the Commission in the *6-MSA Proceeding* was for a different geographic market than the market for which it is seeking relief in this proceeding (*i.e.,* Providence MSA vs. state of Rhode Island). That contention is unavailing. The cable penetration data for the Providence MSA produced by both Cox and Verizon *included data specific to Rhode Island.* Moreover, the cut-the-cord wireless, CLEC, and cable penetration charts filed by Verizon mere days before adoption of the *6-MSA Order were specific to Rhode Island.* Every access line in Rhode Island alone was included in previously-filed data. By providing not merely Providence MSA-wide data but Rhode Island-specific data as well, Verizon was effectively directing the Commission to focus its forbearance analysis on Rhode Island. There was no other purpose for Verizon to file Rhode Island-specific data. Now, Verizon, in filing the instant petition, is seeking to force the Commission – and the industry – to conduct a costly new forbearance proceeding to address the same Rhode Island-specific information that was found insufficient in the prior proceeding.

Verizon wants the Commission to believe there is new, more compelling data regarding cut-the-cord wireless penetration that justifies a conclusion that forbearance is now warranted.[21] Verizon cites the Center for Disease Control's ("CDC's") updated analysis "that places the rate of wireless substitution at 13.6 percent, as of the end of June 2007."[22] Verizon's

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20 *See* Confidential Attachment A to Letter from Evan T. Leo, Counsel to Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (filed Dec. 3, 2007).

21 The Joint Movants disagree with Verizon that cut-the-cord wireless penetration is relevant to the Commission's forbearance analysis. The Joint Movants also disagree with Verizon that it is appropriate to include Wholesale Advantage and Verizon resold lines in the Commission's forbearance analysis.

22 *Verizon Rhode Island Petition*, at 12.

attempted employment of the 13.6 percent wireless penetration figure to gain forbearance is the height of disingenuousness. The very same CDC survey cited by Verizon contains a cut-the-cord wireless penetration number for the Northeast, which includes the state of Rhode Island.[23] The more-relevant Northeast wireless penetration figure is 8.8 percent, far below the national average of 13.6 percent presented by Verizon,[24] and well below the 12.8 percent figure cited by the Commission in the *6-MSA Order*.[25]

Verizon struggles to make the case that its Rhode Island petition is more than just a replica of its petition for the Providence MSA by in effect asking the Commission to interpret the same facts in a different way. In addition to its proposition that the Commission analyze competition using the nationwide wireless penetration figure of 13.6 percent (as opposed to the far more appropriate Northeast penetration figure), Verizon urges the Commission to "attribute[] Verizon Wireless customers who have cut the cord to the competitive side of the ledger, rather than treating them as equivalent to a Verizon wireline customer."[26] Verizon argues this would be appropriate because Verizon's wireline business "is affected by losses to Verizon Wireless the same as if those losses were to another competitive provider."[27] Similarly, Verizon seeks a new interpretation of the same facts through the use of rate centers (rather than the established use of wire centers)[28] and carrier white pages listings[29] as the basis by which to analyze competitive

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23 Stephen J. Blumberg and Julian V. Luke: *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, Division of Health Interview Statistics, January-June 2007*, National Center for Health Statistics, CDC, (rel. Dec. 12, 2007)("*CDC Survey*"), at n. 5 ("Northeast includes Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, and Pennsylvania.").

24 *CDC Survey*, at 7.

25 *See 6-MSA Order*, at Appendix B, n. 2.

26 *Verizon Rhode Island Petition*, at 14.

27 *Id.*

28 *Id.*, at n. 7.

activity. The Commission should not be taken in by this attempt to dress up the same facts to gain another chance at forbearance. Instead, the Commission should send a clear signal that it will not countenance manipulation of Section 10 and its procedures in this manner by dismissing or summarily denying Verizon's petition.

IV. THE COMMISSION SHOULD DISMISS OR SUMMARILY DENY VERIZON'S PETITION BASED ON ESTABLISHED CLAIM PRECLUSION PRINCIPLES

There is considerable precedent for Commission rejection of Verizon's petition on the grounds that the factual issues Verizon raises are duplicative of issues that have already been litigated in a previous Commission proceeding.[30] Indeed, the Commission and the courts have long held that issue preclusion applies to prevent agency re-litigation of factual disputes.[31] For example, in its VHF frequency assignment proceeding, the Commission precluded parties from raising new objections based on interference issues stating, "Unless a party were to come forward with some *newly discovered evidence which for good reason was not available at the time* of the allotment proceeding or otherwise demonstrate good cause, we do not contemplate that 'gain' versus 'loss' issues will be considered again in an assignment proceeding to determine

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29 *Id.*, at 11-12.

30 *See, e.g., Petition for Relief of Fal-Comm Communications, Petition vs. Continental Cablevision of Michigan, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 13319; n.1 (1997) ("Fal-Comm filed this second petition . . . which is duplicative of CSR-4874-L, seeking the same relief for the same issues against Continental Cablevision of Michigan, Inc. Accordingly, this second petition will be dismissed."); *Petition of Budd Broadcasting Company, Inc. for Modification of Market Station WGFL(TV)*, Memorandum Opinion and Order, 14 FCC Rcd 4366, ¶ 3 (1999) ("The principles of *res judicata* and collateral estoppel may be applied to prevent agency litigation of factual disputes."). *See also Auction 65 Public Notice Regarding Long Form/FCC Form 601 Applications Accepted for Filing*, 21 FCC Rcd 13010 (2006).

31 *See United States v. Utah Construction and Mining*, 384 U. S. 394, 422 (1966) ("When an administrative agency is acting in a judicial capacity and resolved disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce repose.") The FCC's use of issue preclusion in licensing adjudications has been upheld in *Gordon County Broadcasting Co. v. FCC*, 446 F.2d 1335, 1338 (D.C. Cir. 1971).

if an application for the allotment should be granted."[32] The doctrine of issue preclusion is triggered when only questions of fact are at stake. Such preclusion serves the parties' interest in avoiding the cost and vexation of repetitive litigation and the public's interest in conserving agency resources.[33]

For the doctrine of issue preclusion to apply, four elements generally must be present: (1) there must be an issue essential to the prior decision and identical to the one previously litigated; (2) the prior decision must have become a final judgment on the merits; (3) the estopped party must have been a party to the prior litigation; and (4) the estopped party had to have had a full and fair opportunity to litigate the issue in the earlier proceeding.[34] In this case, all four prongs have been met: (1) the issue of Verizon's eligibility for forbearance from dominant carrier, *Computer Inquiry* and Section 251(c)(3) unbundling rules is presented in both cases and is sought based on the same underlying factual assertions; (2) the *6-MSA Order* is a final decision on the merits; (3) Verizon was a party to the *6-MSA Proceeding*; and (4) Verizon had a full and fair opportunity to present all of the arguments it makes in the Rhode Island petition in the prior petition for forbearance. On this basis, therefore, the Commission should reject or summarily deny Verizon's petition.

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32 *In re Table of Television Channel Allotments*, Notice of Proposed Rulemaking, 833 FCC 2d 51, n.76 (1980) (emphasis added).

33 *See Univ. of Tenn. v. Elliott*, 478 U.S. 788, 798 (1986) (citing *Allen v. McCurry*, 449 U.S. 90, 94 (1980)).

34 *See in re Petition of: Budd Broadcasting Company, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 4366, ¶ 3 (1999); *In re Applications of Montgomery Media Network, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 3749, ¶ 4 (1989).

V. VERIZON'S PETITION, AT BEST, IS AN UNTIMELY PETITION FOR RECONSIDERATION OF THE 6-MSA ORDER THAT CANNOT BE CONSIDERED BY THE COMMISSION

Verizon's "same facts/different interpretation" strategy constitutes an attempt to change the test applied by the Commission in each of its prior forbearance orders, including the *6-MSA Order*. Verizon's plea that the Commission consider cut-the-cord wireless competition (including "competition" attributable to Verizon Wireless) and employ rate centers (as opposed to wire centers) and carrier white pages listings to analyze the nature and extent of competition in Rhode Island constitute requests for reconsideration of the test established by the Commission in the *Omaha Forbearance Order* and the *Anchorage Forbearance Order* and applied by the Commission in the *6-MSA Order*.

Verizon unquestionably had the right to petition the Commission to reconsider its decision and modify the test employed in the *6-MSA Order*. However, under the express terms of the Act and the Commission's rules, Verizon was obligated to file its petition for reconsideration "within thirty days from the date upon which public notice is given of the order, decision, report or action complained of."[35] That statutorily-prescribed thirty-day window closed well before Verizon filed its Rhode Island petition. The Commission may only extend or waive the statutory thirty-day filing period in "extraordinary circumstances."[36] Verizon did not claim extraordinary circumstances and, indeed, no plausible case can be made that extraordinary circumstances exist here.[37] Thus, Verizon's petition must be rejected as an untimely petition for reconsideration of the *6-MSA Order*.[38]

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35 47 U.S.C. § 405. *See also* 47 C.F.R. § 1.106(f).

36 *Gardner v. FCC*, 530 F.2d 1086, 1091 (D.C. Cir. 1976). *See also Reuters Limited v. FCC*, 781 F.2d 946 (D.C. Cir. 1986).

37 Rejection of Verizon's petition would not preclude Verizon from pursuing its case that the Commission's forbearance test is improper and should be modified. As previously

VI. IF THE COMMISSION DECLINES TO REJECT VERIZON'S PETITION (WHICH IT SHOULD NOT), IT SHOULD GRANT AN EXTENSION OF THE COMMENT CYCLE

For all of the reasons discussed above, the Joint Movants maintain that Verizon's petition should be summarily rejected by the Commission. In the event that the Commission chooses not to conclude that the petition is merely a rehashing of prior facts that must be dismissed or denied, however, it should extend the current comment cycle to provide interested parties sufficient time to analyze and provide input on the petition.[39]

Verizon alleges that "there is no need for a lengthy 12- or 15-month review of [its] petition" and that "[t]he requested forbearance should be granted promptly."[40] Verizon is wrong. Verizon is raising many significant legal questions by its wishful interpretations of the forbearance test applied in the *6-MSA Order* and its attempt to apply new legal test to the facts previously submitted in the *6-MSA Proceeding*. Interested parties must be afforded sufficient time to evaluate and respond to these issues and to analyze and provide input on the repackaged data submitted by Verizon. The outcome of this proceeding is far too important to competitors and consumers for the Commission to rush to judgment.

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noted, Verizon has filed a petition for review of the *6-MSA Order* in the D.C. Circuit. Although briefing has yet to occur in that appeal, Verizon has indicated that it intends to argue that the Commission erred in its application of the Section 10 standard to the facts in the six MSAs at issue, including the Providence MSA. *See* n. 12, *supra*.

38 Even if Verizon's petition had been filed in a timely manner, it still would warrant dismissal. As noted herein, Verizon is seeking judicial review of the *6-MSA Order* in the D.C. Circuit. It is well established that a party may not simultaneously seek both agency reconsideration and judicial review of an agency's order. *See, e.g., Wade v. FCC*, 986 F.2d 1433 (D.C. Cir. 1993). *See also City of New Orleans v. SEC*, 137 F.3d 638 , 639 (D.C. Cir. (1998).

39 A motion seeking a forty-five day extension of the comment cycle is being filed coincident with this motion.

40 *Verizon Rhode Island Petition*, at 2.

VII. CONCLUSION

For all of the reasons outlined above, the Commission should dismiss or deny Verizon's petition. In the event the Commission declines to reject the petition, it should extend the comment cycle forty-five days to provide interested parties a reasonable opportunity to participate fully in the proceeding.

Respectfully submitted,

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March 17, 2008

CERTIFICATE OF SERVICE

I, Susan Ray, hereby certify on this 17th day of March, 2008, that copies of the foregoing Motion to Dismiss or, in the Alternative, Deny Petition for Forbearance were served via forst-class mail, postage-prepaid, to the following:

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